

Status of the Claims

Claims 1-16 remain pending in this application.

Claims 1-12 stand rejected under 35 U.S.C. §102(b) as being anticipated by *Leenaards*, U.S. Pat. No. 3,827,594.

Claim 13 stands rejected under 35 U.S.C. §103(a) as being unpatentable over *Leenaards* in view of *Ferngren*, U.S. patent No. 2,099,056.

Claims 14-16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Leenaards* in view of *Myer*, U.S. patent No. 3,497,098.

The Examiner has also objected to the drawings. A new sheet of drawings is enclosed with this response.

Claims 1-12; rejected under 35 U.S.C. §102(b)

Claims 1-12 stand rejected under 35 U.S.C. §102(b) as being anticipated by *Leenaards*, U.S. Pat. No. 3,827,594. *Leenaards* discloses a crown closure that is shaped to accommodate a seal that engages the lateral face of the bottle to which the closure is attached. That is, the seal is located between the curved portion of the crown closure and the outer side of the bottle. As such, the curved portion of the shell cannot be structured to have the same shape as the container to which the closure will be attached as the curved portion must be shaped to provide a space for the seal. *Leenaards* notes that *after* deformation, i.e. the crimping procedure, the closure is shaped to the mouth of the container.

As stated in MPEP §2131:

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.... The identical invention must be shown in as complete detail as is contained in the ... claim.

*Id.*, citing (*Verdigaal Brothers v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987) and *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, (Fed. Cir. 1989)). It is submitted that upon reading the *Leenaards* reference, one skilled in the art would not consider having a crown closure wherein the curved portion is adapted to be the same shape as the mouth contour of a bottle. Independent claims 1 and 7, and each of the claims that depend therefrom, require a crown closure wherein the curved portion is adapted to be the

same shape as the mouth contour of a bottle. Because *Leenaards* does not teach, either expressly or inherently, crown closure wherein the curved portion is adapted to be the same shape as the mouth contour of a bottle, the reference does not anticipate the invention as recited in claims 1-6 or 7- 12.

Accordingly, the rejection set forth in paragraph 4 of the February 28, 2002 Office Action should be withdrawn.

Claim 13; rejected under 35 U.S.C. §103(a)

Claim 13 stands rejected under 35 U.S.C. §103(a) as being unpatentable over *Leenaards* in view of *Ferngren*, U.S. patent No. 2,099,056. *Leenaards* is discussed above. *Ferngren* discloses a flexible plastic cap for a flexible bottle. *Ferngren* does not discuss a crown closure. As crown closures and plastic caps are different type closures, these references cannot be combined.

Moreover, as stated in, *In re Geiger*, 815 F.2d 686, 2 U.S.P.Q.2d 1276 (Fed. Cir. 1987), "obviousness cannot be established by combining teachings of the prior art to produce the claimed invention, absent some *teaching, suggestion, or incentive* supporting combination." (emphasis added). Put another way, "the mere fact that disclosures or teachings of the prior art *can be* retrospectively combined for the purpose of evaluating obviousness/nonobviousness issue does not make the combination set forth in the invention obvious, unless the art also suggested the desirability of the combination ...." *Rite-Hite Corp. v Kelly Co.*, 629 F.Supp. 1042, 231 U.S.P.Q. 161, *aff'd* 819 F.2d 1120, 2 U.S.P.Q.2d 1915 (E.D.Wis. 1986)(emphasis added). Similarly, the court in, *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991), stated that "both the suggestion [to make the claimed apparatus] and the reasonable expectation of success must be found in the prior art, not in the applicant's disclosure."

Here, the Examiner has only stated that the cited references can be combined. The references do not have a teaching, suggestion, or incentive supporting such a combination. Nor do the references suggest the desirability of the combination or that such a combination would be a success. As such, these references cannot be combined for the purpose of a rejection under 35 U.S.C. § 103(a) and, therefore, the invention as recited in claim 13 is not obvious.

Accordingly, the rejection set forth in paragraph 6 of the February 28, 2002 Office Action should be withdrawn.

Claims 14-16; Rejected under 35 U.S.C. §103(a)

Claims 14-16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Leenaards* in view of *Myer*, U.S. patent No. 3,497,098. *Leenaards* is described above. *Myer* discloses a crown closure having a protective skirt. *Myer* further discloses a method of manufacturing the crown closure using a punch press and a blanking die. *Myer* does not, however, disclose the diameter of the blanks used in the die press. Additionally, *Myer* does not discuss any limitation to the extent of the serrations. However, as shown in the figures, the serrations of *Myer* extend into the curved portion. *Leenaards* discloses that finished crown closures have a skirt diameter of between 20 and 40 mm. However, as discussed above in relation to the rejection of claim 13, in order to combine references, there must be some "teaching, suggestion, or incentive supporting combination." Again, there is no such teaching in these two references.

Independent claim 14 recites a method of producing crown closures wherein the blanks used to form the crown closure have a diameter of about 1.4 inches. As these two references cannot be combined and as neither reference individually teaches the use of 1.4 inch diameter blanks, these references cannot suggest the method set forth in claim 14.

Claims 15 and 16, which each depend from claim 14, each further recite that the serrations do not extend into the curved portion of the shell. As *Myer* teaches that the serrations extend into the curved portion of the shell and because these two references cannot be combined, these references cannot suggest the method set forth in claims 15 and 16.

Accordingly, the rejection set forth in paragraph 7 of the February 28, 2002 Office Action should be withdrawn.

CONCLUSION

It is respectfully submitted that claims 1-12 are not anticipated by *Leenaards*. It is further submitted that claim 13 is patentable over *Leenaards* in view of *Ferngren*. It is further submitted that claims 14-16 are patentable over *Leenaards* in view of *Myer*. As the application would now appear to be in proper form for issuance of a notice of allowance,

such action is respectfully requested at an early date. In the event that any outstanding matters remain in connection with this application, the Examiner is invited to telephone the undersigned at (412) 566.1253 to discuss such matters.

Respectfully submitted,



David C. Jenkins

Registration No. 42,691

Eckert Seamans Cherin & Mellott, LLC

600 Grant Street, 44th Floor

Pittsburgh, PA 15219

(412) 566-1253

Attorney for Applicant